

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ELDRIDGE NICKSON, ET AL. §
VS. § CIVIL ACTION NO. 9:18-CV-172
MELENDRA COLE, ET AL. §

MEMORANDUM OPINION AND ORDER

Plaintiffs Eldridge Nickson, Judy Bogany, and the Estate of Antwaun Bogany filed this civil rights action pursuant to 42 U.S.C. § 1983 against Melenda Cole; Polk County, Texas; the Polk County Sheriff's Department; Sheriff Kenneth Hammack; Brent Phillips; Anthony Clevenger; Jailers Jenkins, Skarpa, and Wright; unknown medical providers; and unknown jailers.

Defendants' Motions to Dismiss

The Polk County Sheriff's Department has moved for dismissal, alleging that it does not have the capacity to sue or be sued because it has no jural existence. Polk County has also moved to dismiss the official capacity claims against the individual defendants because those claims are actually against Polk County.

Analysis

The capacity of an entity to sue or be sued is determined by the law of the state in which the district court is held. FED. R. CIV. P. 17(b). There is no evidence that Polk County has taken steps to grant their Sheriff's Department with jural authority. Thus, the Polk County Sheriff's Department is not a legal entity capable of being sued. *See Darby v. Pasadena Police Dep't*, 939 F.2d 311, 314 (5th Cir. 1991) (holding that a lawsuit brought against the Pasadena Police Department was subject to dismissal because the entity had no jural existence); *Cleveland v. Liberty County Sheriff's Dep't*,

No. 1:13-CV-20, 2014 WL 11858157, at *3 (E.D. Tex. May 5, 2014) (holding that the Liberty County Sheriff's Department is not a legal entity that has the capacity to be sued).

The official capacity claims against defendants Hammock, Phillips, Clevenger, Cole, Jenkins, Skarpa, and Wright are, in essence, claims against Polk County. *See Brumfield v. Hollins*, 551 F.3d 322, 331 n. 9 (5th Cir. 2008). Therefore, the claims against the individual defendants in their official capacities should be dismissed. It is accordingly

ORDERED that defendants' motions to dismiss the claims against the Polk County Sheriff's Department (document no. 3) and the claims against the individual defendants in their official capacities (document no. 4) are **GRANTED**.

So Ordered and Signed

Sep 6, 2019



Ron Clark, Senior District Judge